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Subject: proposed stipulation
Date: Thursday, December 15, 2022 2:42:57 PM
Attachments: [2022-12-xx Stipulation Regarding Evidence Preservation And Inspection \(00494727-3xE4196\).DOCX](#)

Matt, Emily,

Per our discussion yesterday, attached please find a draft stipulation for your consideration. My goal was to hit all the high points of our discussion yesterday - subpoena compliance by a reasonable date, a schedule to resolve any disputes over documents, an agreement to allow for inspections prior to demolition, and a commitment not to alter the buildings in the meantime.

I now need to turn to another matter until about 4:30, but if you want to jump on the phone or Zoom late in the day I could do so, or we could schedule something for tomorrow. If you prefer tomorrow please propose a time for discussion – my schedule is wide open. Cell is always the best number to call.

Many thanks,

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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

No. 2:22-CV-181-WKS

TRACY L. RUBMAN; JAMES
ELLERY BAKER; KATHY A.
LOTHIAN,

Plaintiffs,

v.

BAYER AG; MONSANTO COMPANY;
BAYER CROPSCIENCE L.P.; SOLUTIA,
INC.; PHARMACIA, L.L.C.;
PHARMACIA, INC.; and PHARMACIA
CORP.

Defendants.

**STIPULATION REGARDING DOCUMENT PRODUCTION,
EVIDENCE PRESERVATION, AND BUILDING INSPECTION**

Monsanto Company, Bayer CropScience LP, Solutia Inc., and Pharmacia LLC (“Monsanto”), and the Burlington School District (“BSD”) (collectively “Parties”), hereby stipulate and agree as follows:

WHEREAS:

1. On October 5, 2022, the above captioned Plaintiffs filed this civil action against Defendants for damages arising from the alleged presence of polychlorinated biphenyls (“PCBs”) in the buildings collectively known as Burlington High School and Burlington Technical College (“BHS/BTC”) located in Burlington, Vermont;
2. On November 11, 2022 Defendants learned through media reports that BSD intended to begin demolishing the BHS/BTC campus in January, 2023;
3. Immediately thereafter Monsanto and BSD began communicating about Monsanto’s need to have the opportunity to inspect and/or test the BHS/BTC campus prior to demolition, and the need for Monsanto to obtain certain structural, maintenance, testing, and other relevant documents in advance of those inspections in order to prepare for those inspections;
4. On November 18, 2022, Monsanto served BSD with a subpoena seeking said documents. (See Defendants’ Nov. 18, 2022 Subpoena, attached as **Exhibit A**.)

5. On November 23, 2022, in consideration of both BSD's tight demolition timeline and in the interests of compromise, Monsanto agreed to provisionally narrow the scope of its subpoena, reducing its document requests to focus on materials relating to (a) the construction/design of the high school, (b) renovations, (c) significant maintenance, (d) testing, and (e) the working locations and conditions of Plaintiffs. (*See* Defendants November 23, 2022 email to BSD, attached as **Exhibit B**.)
6. On December 2, 2022, BSD responded to Defendants' narrowed document requests by asserting objections to each request and producing some documents. On December 6, 2022 BSD supplemented its production with additional documents, the combined production totaling approximately 3,000 pages of testing data from 2019 forward. (*See* BSD's Dec. 2, 2022 Letter to Defendants, attached as **Exhibit C**.)
7. On December 8, 2022, in a further effort to assist BSD with its search for relevant documents, Defendants provided BSD a list of search terms to focus the document collection process even more. (*See* Defendants' Dec. 8, 2022 email to BSD, attached as **Exhibit D**.)
8. On December 14, 2022, BSD provided an update on both its document collection efforts and BSD's demolition plans, in particular noting as to the latter that a number of regulatory hurdles still needed to be cleared before demolition could commence, and therefore that demolition was unlikely to proceed in January as previously indicated. (*See* BSD's Dec. 15, 2022 email to Monsanto, attached as **Exhibit E**.)
9. Also on December 14, 2022, counsel for Monsanto and BSD participated in a Zoom meet and confer (their third) during which the Parties reiterated their agreement that Monsanto must be given the opportunity (a) to review certain documents in advance of inspection and (b) to perform inspections of the high school campus in advance of any demolition activities.
10. While the Parties have pledged to work cooperatively to achieve the aforementioned goals, in an abundance of caution – specifically, to ensure no spoliation of evidence relevant to this action – and in the name of establishing a mutually agreeable inspection plan going forward, the Parties agreed to enter into the following Stipulation.

NOW THEREFORE the Parties hereby stipulate and agree as follows:

- A. No later than January 15, 2023, BSD agrees to comply with the Subpoena and produce all responsive materials, and to substantively articulate any objections;
- B. No later than February 1, 2023, the Parties agree to meet and confer concerning any remaining disagreements about Subpoena compliance;
- C. If Monsanto, in its sole discretion, concludes it has sufficient Subpoena compliance by February 1, 2023 to perform the necessary property inspections, the Parties agree to schedule those inspections to occur no later than March 15, 2023;

- D. If the Parties do not agree that sufficient Subpoena compliance has been achieved by February 1, 2023, Monsanto agrees to file any necessary discovery motions no later than February 15, 2023;
- E. If discovery motions are pending as of March 1, 2023, the Parties agree that inspections will be scheduled to occur no later than 30 days after the court rules on the pending discovery motions.
- F. During the period of time that Subpoena compliance is being achieved, any motions practice related to Subpoena compliance is pending, and Monsanto's inspections are being planned and carried out (all as described above), BSD stipulates and agrees (i) that the BHS/BTV buildings shall not be demolished or otherwise altered in any way, (ii) no physical items shall be introduced to or removed from the BHS/BTC buildings without the advance express written consent of Monsanto, and (iii) maintain a daily log identifying by name and contact information any person entering the BHS/BTC buildings, together with dates of entry, descriptions of locations visited, and reasons for entry. No entry into the BHS/BTV buildings shall occur without the advance consent of Monsanto, which consent shall not be unreasonably withheld.
- G. The conditions set forth in the preceding paragraph shall remain in effect until 10 days after Monsanto completes its inspections.
- H. A copy of this Stipulation shall be filed with the Court, and the parties will jointly request that the Court execute the Order Regarding Evidence Preservation attached hereto as **Exhibit F**.

Dated: December [X], 2022

**Monsanto Company, Bayer CropScience LP,
Solutia Inc., and Pharmacia LLC**

/s/ Ian P. Carleton

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Burlington School District

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